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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

10
11 Plaintiff,

12 v.

13 JEFFREY W. CALL,

14 Defendant.
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No. 2:17-PO-0016-JTR-1

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

17 Defendant was charged in the First Amended Information with violating 36
18 C.F.R. § 3.10(a)(1) and (2) on August 6, 2016. On September 20 and 21, 2017, the
19 case was tried to the Court. Defendant was present in person. The United States
20 was represented by Kyle Olson, Intern at the United States Attorney's Office, and
21 Assistant United States Attorney David Herzog. Defendant was represented by
22 attorneys Stephen Roberts and Benjamin Flick of the Federal Defender's Office.

23 The United States presented the sworn testimony of five witnesses.
24 Defendant presented the testimony of Ana Russel and testified in his own behalf.
25 All witnesses were cross-examined.

26 The Court also admitted into evidence certain documents and photographs,
27 and one audio/visual DVD.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

1 Both parties having rested, and having considered all of the foregoing
2 evidence, the Court now issues the following Findings of Fact and Conclusions of
3 Law:

4 **FINDINGS OF FACT**

5 1. All conduct with which Defendant is charged occurred on Lake
6 Roosevelt on the Columbia River, substantially at or near the Crescent Bay boat
7 launch, which is within the Lake Roosevelt National Recreation Area and within
8 the Eastern District of Washington.

9 2. Officer Radovich is a law enforcement officer employed by the
10 National Park Service and was in uniform and on duty on at the Crescent Bay boat
11 launch on August 6, 2016.

12 3. On August 6, 2016, Defendant owned and operated a boat upon the
13 waters of Lake Roosevelt. The boat was a brown 21 foot runabout-style craft,
14 powered by an inboard-outboard engine, with an open cockpit and no cabin or top.

15 4. Defendant was driving the boat when it approached and docked at the
16 Crescent Bay boat launch. After the boat was secured to the dock, Defendant
17 remained in the boat until he was contacted and detained by Officer Radovich.

18 5. Between the time the boat was secured to the dock and the time
19 Defendant was contacted by Officer Radovich, the boat's ignition was switched
20 off. A "kill switch" was also moved to the open position, thus de-energizing the
21 boat's electrical system. The ignition switch was at the driver's seat in the front of
22 the cockpit and required a key to operate. After the ignition was switched off, the
23 key remained in the ignition. The key alone would not start the engine, because
24 the "kill switch" was also off. The "kill switch" was located in the rear of the
25 cockpit, in the corner furthest from the driver' seat, and could only be accessed by
26 removing a panel underneath a rear seat cushion.

27 6. Throughout the day Defendant consumed a quantity of alcohol by
28 drinking "Coors Light" beer from silver-colored cans.

1 7. Officer Radovitch administered certain field sobriety tests, including a
2 Horizontal Gaze Nystagmus test and a “walk and turn” test, and, from the number
3 of “clues” exhibited, he found probable cause to believe Defendant was under the
4 influence of alcohol. Defendant asserted that the lingering effects of injuries to
5 each leg prevented him from performing some tests well and from performing
6 other tests at all.

7 8. Defendant provided a breath sample by blowing in a Datamaster CVN
8 instrument at the Grand Coulee Police Department.

9 9. The Datamaster CVN operated on generally accepted scientific
10 principles measuring the quantity of alcohol in exhaled breath and correlating it to
11 the quantity of alcohol in the bloodstream.

12 10. The Datamaster CVN at the Grand Coulee Police Department was
13 calibrated, maintained and operated in compliance with procedures promulgated by
14 the Washington State Toxicologist, by individuals trained and certified in its
15 operation.

16 11. Within approximately 50 minutes of Defendant being placed in
17 custody, the Datamaster CVB at the Grand Coulee Police Department measured
18 the alcohol content of Defendant’s breath as .173 and .171 grams of alcohol per
19 210 liters of breath at 7:19 p.m. and 7:22 p.m., respectively.

20 **CONCLUSIONS OF LAW**

21 1. The Lake Roosevelt National Recreation Area is within Federally
22 owned lands and waters administered by the National Park Service.

23 2. Defendant operated a “vessel” within the meaning of 36 C.F.R. §
24 1.4(a).

25 3. The evidence does not establish beyond a reasonable doubt that
26 Defendant operated or was in physical control of a vessel while under the influence
27 of alcohol to a degree that rendered him incapable of safe operation.

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1 4. At the time Defendant operated or was in physical control of the
2 vessel, the concentration of alcohol in his breath was over .08 grams of alcohol per
3 210 liters of breath.

4 Based on the foregoing, the Court finds Defendant Jeffrey W. Call is
5 **GUILTY** of violating 36 C.F.R. § 3.10(a)(2) on August 6, 2016.

6 The District Court Executive shall enter this Findings of Fact and
7 Conclusions of Law and provide copies to counsel.

8 DATED September 29, 2017.

A handwritten signature in black ink, appearing to read "M", is written over a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE